

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMIE L. VICK n/k/a JAMIE L. SHAFFER¹)	
Claimant)	
VS.)	
)	
STATE OF KANSAS)	Docket No. 1,033,888
Respondent)	
AND)	
)	
STATE SELF-INSURANCE FUND)	
Insurance Fund)	

ORDER

Claimant appealed the November 20, 2012, post-award medical award entered by Administrative Law Judge (ALJ) Kenneth J. Hursh. The Board placed this appeal on its summary docket for disposition without oral argument.

APPEARANCES

Dennis L. Horner of Kansas City, Kansas, appeared for claimant. Amanda S. McGannon of Kansas City, Kansas, appeared for respondent and its insurance fund (respondent).

RECORD

The record considered by the Board is listed in the November 20, 2012, post-award medical award and the March 14, 2012, Award.

ISSUES

1. Should claimant's request for additional medical treatment to her left lower extremity be granted?

¹ Claimant is now married and her surname is now Shaffer.

FINDINGS OF FACT

After reviewing the record and considering the parties' briefs, the Board finds and concludes:

Briefly stated, claimant was a mental health technician at the Osawatomie State Hospital. On February 1, 2007, she was dealing with a combative patient who knocked her down. She landed on her head and left knee. Claimant sought treatment and underwent two surgeries on her left knee. The first knee surgery was a left knee arthroscopy with patellar chondroplasty and lateral release on March 7, 2007, by Dr. E. J. Wilkinson. Claimant's second knee operation was a partial synovectomy with patellar chondroplasty, arthroscopic lateral release and an open VMO advancement on September 27, 2007, by Dr. Vincent Key. Neither surgery gave her any relief. Claimant was then referred to Dr. Daniel J. Stechschulte, Jr., who performed a third surgery on claimant's left knee on May 19, 2008. The surgery performed by Dr. Stechschulte was a partial left knee replacement involving resurfacing the patella and trochlear with plastic and metal.

On March 14, 2012, ALJ Hursh entered an Award. The issues were claimant's average weekly wage, nature and extent of claimant's disability and whether claimant was entitled to future medical benefits. With regard to claimant's left knee, ALJ Hursh found claimant had a 50% functional impairment. Claimant alleged a back injury, but ALJ Hursh found claimant only proved a left knee injury. ALJ Hursh awarded claimant future medical benefits, as Drs. Stechschulte and Peter V. Bieri testified claimant may need a complete left knee arthroplasty in the future. Both parties appealed ALJ Hursh's Award to the Board.

On July 2, 2012, claimant filed an application for post-award medical that requested additional medical care and treatment, but did not specify the nature of the treatment requested. At the August 1, 2012, post-award hearing, claimant requested to see an orthopedic doctor to see what could be done for her left knee.

At the post-award hearing, claimant indicated the last time she saw a physician for her left knee injury was when she saw Dr. Bieri in October 2011. Claimant testified since her accident, she had sustained no new injuries, was unemployed and was a student. She indicated the left knee swelled daily and she experienced sharp pains going into the left thigh. When claimant is "on" the left knee for long periods of time, it starts to crunch, grind and pop. Claimant testified that if her knee swells, she favors it. That, in turn, causes her back to ache and be painful. Claimant felt her left knee had gradually gotten worse. Since the regular hearing, the left knee had more popping and grinding and claimant was having more pain, more frequently. Claimant testified she had spoken to her family doctor, Dr. Jerad Widman, about the left knee. However, Dr. Widman could not treat the knee, because the injury was workers compensation related. According to claimant, Dr. Widman wanted to refer claimant to an orthopedic doctor.

In an Order dated September 13, 2012, the Board modified ALJ Hursh's Award to reflect that claimant was entitled to future medical benefits upon application, but affirmed the Award in all other respects. Neither party appealed the Board's Order.

Dr. Widman was deposed by claimant on October 10, 2012. In 2009, claimant became a patient of Dr. Widman. Dr. Widman treated claimant for a variety of health issues, including depression, anxiety, fatigue and abdominal pain. Initially, Dr. Widman did not focus on claimant's left knee and back conditions, as other physicians were providing treatment. However, after some time, claimant felt she was not getting adequate care. It was at that point that Dr. Widman started to address claimant's left knee and back pain. He indicated that at times, claimant had pain that was completely debilitating, but did not specify whether he meant left knee pain, back pain, or both. Dr. Widman testified that claimant should be evaluated for a left knee replacement.

On cross-examination, Dr. Widman indicated claimant might need a left knee replacement so soon after her 2008 operation because of inadequate control of pain. Dr. Widman also testified that since 2008, there have been advancements in the type of knee replacements that can be performed. He learned of the advancements while trying to keep up to date with medical journals for family physicians. Dr. Widman personally noticed popping and crepitus in claimant's left knee.

Drs. Stechschulte² and Bieri³ testified that claimant may need at least one, and possibly two, complete left knee replacements in the future.

ALJ Hursh denied claimant's request for additional medical treatment, finding that "reasonable and necessary treatment options for this claimant's injury have been exhausted."⁴ ALJ Hursh described Dr. Widman's testimony on knee replacement advancements as vague. In his post-award medical award, ALJ Hursh stated:

K.S.A. 44-510h requires the employer to provide the services of a health care provider as may be reasonably necessary to cure and relieve the employee of the effects of the injury. The question, then, is whether it is reasonable and necessary to appoint a fourth knee surgeon to evaluate the claimant. The court thinks not, and the lack of any particular identifiable knee problem was an important factor. The record showed there has been a great deal of treatment provided already from physicians addressing the claimant's reported symptoms. A future physician would be in the same position, trying to address reported symptoms. A future physician may or may not try yet another surgery to see if it helps, but the claimant's track

² Stechschulte Depo. at 17-18.

³ Bieri Depo. at 19.

⁴ Post Medical Award (Nov. 20, 2012) at 2.

record of no relief of symptoms whatsoever from any treatment to date makes it hard to believe the fourth time will be the charm. Dr. Widman's testimony about new medical advancements was not convincing.⁵

PRINCIPLES OF LAW AND ANALYSIS

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.⁶ "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."⁷

K.S.A. 2006 Supp. 44-510h(a) states:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

Drs. Stechschulte and Bieri opined that claimant may need one, perhaps two, left knee replacements in the future. Dr. Widman testified that claimant was having inadequate pain control and should be evaluated for left knee replacement. That testimony is uncontroverted. The Board agrees with Dr. Widman's assessment. Almost five years have passed since claimant's last surgery and she continues to have significant left knee pain. Simply put, the medical treatment sought by claimant is reasonable and necessary to cure and relieve the effects of her injury.

WHEREFORE, the Board reverses the November 20, 2012, post-award medical award entered by ALJ Kenneth J. Hursh. This matter is remanded to ALJ Hursh for further proceedings and orders consistent with this Order.

IT IS SO ORDERED.

⁵ *Id.*

⁶ K.S.A. 2006 Supp. 44-501(a).

⁷ K.S.A. 2006 Supp. 44-508(g).

Dated this ____ day of February, 2013.

BOARD MEMBER

BOARD MEMBER

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Kenneth J. Hursh, Administrative Law Judge